IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WA.No. 1628 of 2007

AGAINST THE JUDGEMENT IN WPC.4013/2007
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APPELLANT: PETITIONER:

ABDUL VAHID,
KOTTILIL VEEDU, VADKKEVILA, KOLLAM.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS: RESPONDENTS:
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1. THE DEPUTY TAHSILDAR (R.R),
TALUK OFFICE, KOLLAM.

2. THE COMMERCIAL TAX OFFICER,
II CIRCLE, COMMERCIAL TAXES, KOLLAM.

3. A.J. NIZAR,
SAJ TRADING COMPANY, NIZAR MANZIL,
MANAKKADU, VADAKKEVILA P.O., KOLLAM.

R1 & 2 BY SENIOR GOVERNMENT PLEADER SRI MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.1628 of 2007

Dated, this the 5th day of July, 2007

JUDGMENT

K.T. SANKARAN, J.

The 3rd respondent is a dealer registered under the Kerala General Sales Tax Act (for short the Act). The appellant is a surety to the 3rd respondent and he executed Ext.P3 bond as directed by the sales tax authorities under rule 6 of the Kerala General Sales Tax Rules (the Rules for short). Ext.P3 shows that the liability of the surety is to a tune of Rs.1 lakh. A sum of more than Rs.23 lakhs is due from the 3rd respondent as sales tax arrears. Revenue recovery proceedings were initiated against the appellant as well.

2. The writ petition was filed by the appellant herein praying for the following reliefs:

> "i. issue a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Exhibit P5 demand notice and quashing the same;
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> ii. issue a writ of mandamus or other appropriate writ, direction or order directing the1st and 2nd respondents to abstain from enforcing any demand against the petitioner beyond one half of the tax assessed on the 3rd respondent for the relevant year of registration certified in Ext.P2 or the sum assured in Ext.P3, whichever is less;
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> iii) pronounce that the assessing authority has to issue demand notice to the guarantors for the sum assured before proceeding to enforce the contract of guarantee by opting Revenue

Recovery Act;

iv) issue such other writ, direction or order as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case and to allow this Original Petition with the petitioner's costs."

3. Rule 6 of the KGST Rules reads as follows:

"Security to be furnished by certain dealers.- (1) Where the assessing authority is of the opinion that a dealer who has applied for registration or has been registered or has applied for renewal of registration should furnish security or additional security for the proper payment of the tax payable by him, the said authority, may direct him in writing to furnish, within such time as may be fixed by the said authority security for an amount, not exceeding one half of the tax payable on the turnover of the dealer for the years as estimated by it or three months, compounded amount in the case of dealers who have opted to pay tax under Section 7. In making such estimate the said authority shall take into account the taxable turnover of the dealer, if any, during the preceding years, the trend of business at the time the estimate is made, the nature of the goods dealt in by him and such other factors as may, in the opinion of the said authority, assist it in making a proper estimate.

(2) Such security may be furnished by the dealer in any of the following ways, namely:

(a) by depositing as security in the Government Treasury the amount fixed by the said authority; or

(b) by depositing with the said authority Government securities for the amount fixed by the said authority; or

(c) by depositing security amount in the Post Office Savings Bank and pledging the Pass book to and depositing it with, the said authority; or

(d) by furnishing to the said authority a guarantee from a Bank, approved in this behalf by the said authority, agreeing to pay to the State Government, on demand, the amount of security fixed by the said authority; or

(e) by furnishing two sureties acceptable to the said authority by executing a security bond for such amount in Form 6.

(f) by a bond prescribed under rule 42 for the amount fixed by the said authority in Form No.39 duly registered along with title, possession and valuation certificates obtained from the Tahsildar concerned and the value of property shall not be lower than the amount, shown in the bond.

Explanation.- In the case of security furnished in Form No.6, surety must be solvent enough for the amount assured.

(3) The security furnished shall be maintained in full so long as the registration certificate continues to be in force and may in the event of default of payment of any tax be liable to

adjustment towards such tax after due intimation."

The contention of the appellant is that going by rule 6(1) of the Rules, his liability would not exceed one-half of the tax payable on the turnover of the dealer for the year in question or Rs.1 lakh, whichever is less. The learned Single Judge rejected this contention and held that the liability of the appellant is as per Ext.P3 bond and that the security bond shall remain in force so long as the registration certificate continues to be in force as contemplated in rule 6(3) of the Rules.

4. Rule 6(1) applies where the assessing authority is of the opinion that a dealer who has applied for registration or has been registered or has applied for renewal of registration should furnish security or additional security for the proper payment of tax. Such security is to be given for the amount not exceeding one-half of the tax payable on the turnover of the dealer for the year as estimated by the authority. Security is to be furnished in the manner provided in sub-rule (2) of rule 6. Ext.P3 is a bond which comes under sub-rule (2)(e) of rule 6. So far as the surety is concerned, he need not be heard by the authority while fixing the amount under rule 6(1). At the stage of fixing the amount under Rule 6(1), surety does not come into the picture at all. His liability arises under the bond and it has no reference or relevance to rule 6(1). Once a bond is executed, as per rule 6(3) such security shall remain in force till the registration certificate continues to be in force and it can be enforced in the event of default of payment of tax by the dealer registered under the Act. A surety is not entitled to question the correctness or otherwise of a direction issued under Rule 6(1) to the dealer, when proceedings are initiated against the surety. A proceeding under Rule 6(1)

is between the sales tax authority and the dealer. Surety of the dealer has no role in the proceedings under Rule 6(1).

5. The contention of the appellant that his liability is to be fixed taking into account the liability of the dealer is without substance and it is against rule 6(2) of the Rules. The learned Single Judge was perfectly justified in dismissing the writ petition. The appellant is not entitled to any relief in this writ appeal.

The writ appeal fails and it is dismissed.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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